

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

6 PATRICK D. TAYLOR, )  
7 Plaintiff, ) No. CV-08-0357-CI  
8 v. ) ORDER DENYING PLAINTIFF'S  
9 MICHAEL J. ASTRUE, Commissioner ) MOTION FOR SUMMARY JUDGMENT  
10 of Social Security, ) AND GRANTING DEFENDANT'S  
11 Defendant. ) MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 13, 16.) Attorney Lora Lee Stover represents Patrick Taylor (Plaintiff); Special Assistant United States Attorney Stephanie R. Martz represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

## JURISDICTION

22 Plaintiff protectively filed for disability insurance benefits  
23 (DIB) and Supplemental Security Income (SSI) on September 28, 2005.  
24 (Tr. 110.) He alleged disability due to anti-social personality  
25 disorder, back problems from degenerative disc disease and blindness  
26 of the left eye, with an alleged onset date of November 9, 2000.  
27 (Tr. 115-16.) His claim was denied initially and on  
28 reconsideration. (Tr. 39-46.) Plaintiff requested a hearing before

1 an administrative law judge (ALJ), which was held on February 13,  
2 2008, before ALJ Richard Say. (Tr. 544-71.) Plaintiff, who was  
3 represented by counsel, and vocational expert Deborah Lapoint (VE)  
4 testified. The ALJ denied benefits on May 10, 2008, and the  
5 Appeals Council denied review. (Tr. 15-24, 4-6) The instant matter  
6 is before this court pursuant to 42 U.S.C. § 405(g).

7 **STATEMENT OF THE CASE**

8 The facts of the case are set forth in detail in the transcript  
9 of proceedings, and are briefly summarized here. At the time of the  
10 hearing, Plaintiff was 40 years old. (Tr. 548.) He had a high school  
11 equivalency degree, was unmarried and lived with his fourteen year  
12 old son in an apartment. (Tr. 549.) He testified he hurt his back  
13 on the job in November 2000, and had earned very little money since  
14 that time. He had past work experience as a construction worker  
15 (form setter), a foundry worker, a janitor and a linen cleaner.  
16 (Tr. 116, 565.) He had an extensive drug abuse history, but stopped  
17 using so he could retain custody of his son. (Tr. 199.) He  
18 testified he and his son do little cooking or cleaning. He stated  
19 he was able to do laundry if necessary. (Tr. 551-52, 558-59.) His  
20 daily activities included shopping, sitting and watching television,  
21 sleeping and visiting with friends who come to see him. (Tr. 552,  
22 559.) He testified he could lift ten or fifteen pounds, could sit  
23 in a chair for about one half hour, stand five or ten minutes, and  
24 walk about three blocks. (Tr. 553.) He stated he could squat or  
25 bend over if he had to, but it caused him pain. He testified he was  
26 not on any pain medication except occasional over-the counter  
27 medicine. (Tr. 556.) At the time of the hearing, he had just  
28

1 started hepatitis C treatment. (Tr. 557-58.) He reported he had  
2 over 30 criminal charges, most of them relating to assault or  
3 domestic violence. (Tr. 563.)

4 **ADMINISTRATIVE DECISION**

5 ALJ Say first found Plaintiff met the insured status for DIB  
6 purposes through December, 31, 2004. At step one, the ALJ found  
7 Plaintiff had not engaged in substantial gainful activity since the  
8 alleged onset date. (Tr. 17.) At step two, he found Plaintiff had  
9 severe impairments of degenerative disk disease of the lumbar spine,  
10 left eye blindness, an anxiety disorder, and a non-severe impairment  
11 of hepatitis C. (Tr. 17-18.) He determined at step three that  
12 Plaintiff's impairments, alone and in combination, did not meet or  
13 medically equal one of the listed impairments in 20 C.F.R., Appendix  
14 1, Subpart P, Regulations No. 4 (Listings). (Tr. 19.) At step  
15 four, the ALJ found Plaintiff has the residual functional capacity  
16 (RFC) to perform light work with the following non-exertional  
17 restrictions: he should not do math; he has limited depth perception  
18 and should avoid heights and moving machinery; he can climb or stoop  
19 occasionally; he can carry out short, simple instructions; and he is  
20 restricted to superficial contact with coworkers and the general  
21 public. (Tr. 20.) In assessing Plaintiff's RFC, the ALJ found his  
22 symptom statements were not credible to the extent they were  
23 inconsistent with the RFC assessed. (Tr. 21.) Based on this RFC and  
24 VE testimony, the ALJ found Plaintiff was unable to perform his past  
25 relevant work. (Tr. 19.) Proceeding to step five, ALJ Say  
determined Plaintiff was able to perform other jobs that existed in  
26 significant numbers in the national economy, such as housekeeping  
27  
28

1 cleaner, cafeteria attendant, and merchandise marker. (Tr. 23.) He  
 2 concluded Plaintiff was not under a "disability" as defined by the  
 3 Social Security Act at any time from the alleged onset date through  
 4 the date of his decision. (Tr. 24.)

5 **STANDARD OF REVIEW**

6 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
 7 court set out the standard of review:

8 A district court's order upholding the Commissioner's  
 9 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
 10 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
 11 Commissioner may be reversed only if it is not supported  
 12 by substantial evidence or if it is based on legal error.  
 13 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
 14 Substantial evidence is defined as being more than a mere  
 15 scintilla, but less than a preponderance. *Id.* at 1098.  
 16 Put another way, substantial evidence is such relevant  
 17 evidence as a reasonable mind might accept as adequate to  
 18 support a conclusion. *Richardson v. Perales*, 402 U.S.  
 19 389, 401 (1971). If the evidence is susceptible to more  
 20 than one rational interpretation, the court may not  
 21 substitute its judgment for that of the Commissioner.  
 22 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
 23 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

24 The ALJ is responsible for determining credibility,  
 25 resolving conflicts in medical testimony, and resolving  
 26 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
 27 Cir. 1995). The ALJ's determinations of law are reviewed  
 28 *de novo*, although deference is owed to a reasonable  
 29 construction of the applicable statutes. *McNatt v. Apfel*,  
 30 201 F.3d 1084, 1087 (9th Cir. 2000).

31 **SEQUENTIAL PROCESS**

32 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
 33 requirements necessary to establish disability:

34 Under the Social Security Act, individuals who are  
 35 "under a disability" are eligible to receive benefits. 42  
 36 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
 37 medically determinable physical or mental impairment"  
 38 which prevents one from engaging "in any substantial  
 39 gainful activity" and is expected to result in death or  
 40 last "for a continuous period of not less than 12 months."  
 41 42 U.S.C. § 423(d)(1)(A). Such an impairment must result

1 from "anatomical, physiological, or psychological  
 2 abnormalities which are demonstrable by medically  
 3 acceptable clinical and laboratory diagnostic techniques."  
 4 42 U.S.C. § 423(d)(3). The Act also provides that a  
 5 claimant will be eligible for benefits only if his  
 6 impairments "are of such severity that he is not only  
 7 unable to do his previous work but cannot, considering his  
 8 age, education and work experience, engage in any other  
 9 kind of substantial gainful work which exists in the  
 10 national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
 11 the definition of disability consists of both medical and  
 12 vocational components.

13 In evaluating whether a claimant suffers from a  
 14 disability, an ALJ must apply a five-step sequential  
 15 inquiry addressing both components of the definition,  
 16 until a question is answered affirmatively or negatively  
 17 in such a way that an ultimate determination can be made.  
 18 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
 19 claimant bears the burden of proving that [s]he is  
 20 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
 21 1999). This requires the presentation of "complete and  
 22 detailed objective medical reports of h[is] condition from  
 23 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
 24 404.1512(a)-(b), 404.1513(d)).

25 It is the role of the trier of fact, not this court, to resolve  
 26 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
 27 supports more than one rational interpretation, the court may not  
 28 substitute its judgment for that of the Commissioner. *Tackett*, 180  
 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
 Nevertheless, a decision supported by substantial evidence will  
 still be set aside if the proper legal standards were not applied in  
 weighing the evidence and making the decision. *Brawner v. Secretary*  
*of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
 there is substantial evidence to support the administrative  
 findings, or if there is conflicting evidence that will support a  
 finding of either disability or non-disability, the finding of the  
 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
 1230 (9<sup>th</sup> Cir. 1987).

## ISSUES

The question is whether the ALJ's decision is supported by substantial evidence and free of legal error. Plaintiff argues the ALJ erred when he: (1) assessed Plaintiff's credibility; (2) found no severe mental impairments other than anxiety disorder; (3) improperly rejected treating and examining medical opinions concerning his psychiatric diagnoses; (4) improperly assessed his RFC; and (5) posed an incomplete hypothetical question to the VE. (Ct. Rec. 14 at 8, 10-14.)

## DISCUSSION

#### A. Credibility

Although Plaintiff asserts the ALJ erred in assessing his credibility, he does not identify specific findings that are erroneous. Nonetheless, *de novo* review indicates the ALJ's credibility findings are supported with "clear and convincing" reasons as required by case law. It is well-settled that when an adjudicator finds a claimant's statements as to the severity of impairments, pain and limitations are not credible, the ALJ must make a credibility determination with findings sufficiently specific to permit the court to conclude the ALJ did not arbitrarily discredit claimant's allegations. *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9<sup>th</sup> Cir. 1991) (en banc). If there is no affirmative evidence that the claimant is malingering, the ALJ must provide "clear and convincing" reasons for rejecting the claimant's allegations regarding the severity of symptoms. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir. 1998). The ALJ engages in a two-step analysis in

1 deciding whether to admit a claimant's subjective symptom testimony.  
2 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9<sup>th</sup> Cir. 2007);  
3 *Smolen v. Chater*, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996). Under the  
4 first step, the ALJ must find the claimant has produced objective  
5 medical evidence of an underlying "impairment," and that the  
6 impairment, or combination of impairments, could reasonably be  
7 expected to cause "some degree of the symptom." *Lingenfelter*, 504  
8 F.3d at 1036. Once the first test is met, the ALJ must evaluate the  
9 credibility of the claimant and make specific findings supported by  
10 "clear and convincing" reasons. *Id.* In addition to ordinary  
11 techniques of credibility evaluation, the ALJ may consider the  
12 following factors when weighing the claimant's credibility: the  
13 claimant's reputation for truthfulness; inconsistencies either in  
14 his allegations of limitations or between his statements and  
15 conduct; daily activities and work record; and testimony from  
16 physicians and third parties concerning the nature, severity, and  
17 effect of the alleged symptoms. *Light v. Social Sec. Admin.*, 119  
18 F.3d 789, 792 (9th Cir. 1997); *Fair v. Bowen*, 885 F.2d at 597 n.5  
19 (9<sup>th</sup> Cir. 1989).

20 The ALJ may also consider an unexplained failure to follow  
21 treatment recommendations and testimony by the claimant "that  
22 appears less than candid." *Tommasetti v. Astrue*, 533 F.3d 1035,  
23 1039 (9<sup>th</sup> Cir. 2008). As explained by the Commissioner in his policy  
24 ruling, the ALJ need not totally reject a claimant's statements; he  
25 may find the claimant's statements about pain to be credible to a  
26 certain degree, but discount statements based on his interpretation  
27 of evidence in the record as a whole. *SSR 96-7p*. "For example, an  
28

1 adjudicator may find credible an individual's statement as to the  
2 extent of the functional limitations or restrictions due to  
3 symptoms; i.e., that the individual's abilities to lift and carry  
4 are compromised, but not to the degree alleged." *Id.* If the ALJ's  
5 credibility finding is supported by substantial evidence in the  
6 record, "the court may not engage in second-guessing." *Thomas*, 278  
7 F.3d at 959; *Fair*, 885 F.2d at 604 ("credibility determinations are  
8 the province of the ALJ").

9 Here, as noted by the ALJ, there is affirmative evidence of  
10 malingering. Specifically, the ALJ found evidence of malingering,  
11 criminal behavior, and drug and alcohol abuse. (Tr. 18, 199.) He  
12 noted Plaintiff's medical providers reported Plaintiff was  
13 exaggerating his symptoms, was inconsistent in his report of  
14 criminal history, his child protective services history and  
15 substance abuse. (*Id.*; Tr. 198, 206.) In addition, ALJ Say  
16 referenced results of objective testing by Dr. Debra Brown that  
17 indicated Plaintiff was malingering, and in her opinion, although  
18 he would have difficulty working with others due to anti-social  
19 traits, Plaintiff could work. (Tr. 18, 206-07, 215.) In explaining  
20 his basis for the RFC determination (which limited Plaintiff to  
21 "superficial contact" with coworkers and the public), the ALJ  
22 summarized Plaintiff's testimony, specifically noting  
23 inconsistencies between his allegations and the objective medical  
24 evidence, his statement to medical providers and the opinions of  
25 treating sources who opined he could perform work. (Tr. 21-22, 206,  
26 215, 222.) To reject a claimant's subjective complaints, the ALJ  
27 must provide "specific, cogent reasons for the disbelief." *Morgan*,  
28 169 F.3d at 599 (quoting *Rashad v. Sullivan*, 903 F.2d 1229, 1231

1 (9th Cir. 1990). If there is no affirmative evidence of  
 2 malingering, the reasons must be "clear and convincing." *Lester v.*  
 3 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995.) Because there is clear  
 4 evidence of malingering, "clear and convincing" reasoning was not  
 5 required to reject Plaintiff's subjective statements. *Reddick v.*  
 6 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Nonetheless, the ALJ  
 7 rationally interpreted the evidence and articulated "clear and  
 8 convincing" reasons for discounting the severity of Plaintiff's  
 9 assertions of disabling symptoms. (Tr. 21.) Further, it is also  
 10 noted that the ALJ's credibility findings did not totally reject  
 11 Plaintiff's subjective symptoms. The final RFC incorporates  
 12 exertional and non exertional limitations supported by the record in  
 13 its entirety and Plaintiff's credible statements. (Tr. 20-22.)

14 **B. Step Two: Mental Impairments**

15 Plaintiff argues the ALJ erred when he ignored the diagnoses of  
 16 medical sources and failed to find severe mental impairments of  
 17 psychotic disorder and anti-social disorder. However, Plaintiff  
 18 does not specify which medical source opinion he believes was  
 19 erroneously ignored. (Ct. Rec. 14 at 13.) Further, *de novo* review  
 20 indicates the ALJ properly evaluated the medical evidence and  
 21 supported his determination by proper reference to the record.

22 At step two of the sequential evaluation, the ALJ determines  
 23 whether a claimant suffers from a "severe" impairment, *i.e.*, one  
 24 that significantly limits his physical or mental ability to do basic  
 25 work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). To satisfy  
 26 step two's requirement of a severe impairment, the claimant must  
 27 prove the existence of a physical or mental impairment by providing  
 28

1 medical evidence consisting of signs, symptoms, and laboratory  
 2 findings; the claimant's own statement of symptoms alone will not  
 3 suffice. 20 C.F.R. §§ 404.1508, 416.908. The fact that a medically  
 4 determinable condition exists does not automatically mean the  
 5 symptoms are "severe," or "disabling" as defined by the Social  
 6 Security regulations. *See, e.g., Edlund*, 253 F.3d at 1159-60; *Fair*,  
 7 885 F.2d at 603; *Key v. Heckler*, 754 F.2d 1545, 1549-50 (9<sup>th</sup> Cir.  
 8 1985).

9 The Commissioner has passed regulations which guide dismissal  
 10 of claims at step two. Those regulations state an impairment may be  
 11 found to be not severe when "medical evidence establishes only a  
 12 slight abnormality or a combination of slight abnormalities which  
 13 would have no more than a minimal effect on an individual's ability  
 14 to work." *SSR 85-28*.<sup>1</sup> "The severity requirement cannot be satisfied  
 15 when medical evidence shows that the person has the ability to  
 16 perform basic work activities, as required in most jobs." Basic  
 17 work activities include: "walking, standing, sitting, lifting,  
 18 pushing, pulling, reaching, carrying, or handling; seeing, hearing,  
 19 speaking; understanding, carrying out and remembering simple  
 20 instructions; responding appropriately to supervision, coworkers,  
 21 and usual work situation." *Id.*

22 As further explained in the Commissioner's policy ruling,  
 23 "medical evidence alone is evaluated in order to assess the effects  
 24 of the impairments on ability to do basic work activities." *Id.*

---

25  
 26 <sup>1</sup> The Supreme Court upheld the validity of the Commissioner's  
 27 severity regulation, as clarified in *SSR 85-28*, in *Bowen v. Yuckert*,  
 28 482 U.S. 137, 153-154 (1987).

1 Thus, in determining whether a claimant has a severe impairment, the  
2 ALJ evaluates the medical evidence submitted and must explain the  
3 weight given to the opinions of accepted medical sources in the  
4 record. The agency regulations distinguish among the opinions of  
5 three types of accepted medical sources: (1) sources who have  
6 treated the claimant; (2) sources who have examined the claimant;  
7 and (3) sources who have neither examined nor treated the claimant,  
8 but express their opinion based upon a review of the claimant's  
9 medical records. 20 C.F.R. §§ 404.1527, 416.927. A treating  
10 physician's opinion carries more weight than an examining  
11 physician's, and an examining physician's opinion carries more  
12 weight than a non-examining reviewing or consulting physician's  
13 opinion. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9<sup>th</sup> Cir. 2004);  
14 *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995), "As is the case  
15 with the opinion of a treating physician, the Commissioner must  
16 provide 'clear and convincing' reasons for rejecting the  
17 uncontradicted opinion of an examining physician." *Lester*, 81 F.3d  
18 at 830 (citation omitted). If the opinion is contradicted, it can  
19 only be rejected for "specific" and "legitimate" reasons that are  
20 supported by substantial evidence in the record. *Andrews*, 53 F.3d  
21 at 1043.

22 Historically, the courts have recognized conflicting medical  
23 evidence, the absence of regular medical treatment during the  
24 alleged period of disability, and the lack of medical support for  
25 doctors' reports based substantially on a claimant's subjective  
26 complaints of pain as specific, legitimate reasons for disregarding  
27 a treating or examining physician's opinion. *Flaten v. Secretary of*  
28

<sup>1</sup> *Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); *Fair*, 885 F.2d at 604.

## 1. Psychotic Disorder

The ALJ discussed the Plaintiff's psychiatric evaluation for child protective services completed by David Bot, M.D., dated December 22, 2005, in which Dr. Bot diagnosed psychosis, NOS; personality disorder NOS with antisocial features. (Tr. 19, 22, 222-26.) He specifically found that Dr. Bot noted "the claimant did not currently present as psychotic and opined that his psychotic symptoms might be exclusively related to his drug use." (*Id.*) As indicated in Dr. Bot's report, Plaintiff reported methamphetamine use two months before his interview with Dr. Bot. Plaintiff stated "using methamphetamine was his business," but he did not use around his son. (Tr. 225.) He also reported he could not remember the last time he had heard voices (which he did not consider a "big deal"); he stated he was planning to work in the spring, and was working the week before the evaluation. (Tr. 222.) The ALJ was not required to reject Dr. Bot's opinion that Plaintiff was not psychotic at the time of the interview, or Dr. Bot's speculation that symptoms were related to drug abuse, as these opinions were reasonably interpreted as consistent with the ALJ's exclusion of psychotic disorder as a severe mental impairment. 20 C.F.R. §§ 404.1520(c), 416.920(c).

## 2. Anti-social Personality Disorder

25 It is noted on *de novo* review that agency psychologist Jerry  
26 Gardner, Ph.D., opined Plaintiff exhibited symptoms of a personality  
27 disorder and was markedly limited in his ability to interact  
28 properly with the general public. (Tr. 176, 179-80.) However, Dr.

1 Gardner opined in his narrative portion that Plaintiff could be  
2 pleasant and appropriate, and provided care for his son. He  
3 concluded Plaintiff was able to "carry out superficial task related  
4 social interactions appropriately," but "may have more than average  
5 conflict with supervisors and coworkers." (Tr. 179-80.) The ALJ  
6 acknowledged Dr. Gardner's non-examining medical source opinion, and  
7 included corresponding restrictions in his RFC. (Tr. 22.) The ALJ's  
8 decision reflects reasoned consideration of reports and evaluations  
9 from other mental health sources, including the reports from Dr.  
10 Brown, Dr. Bot, and reviewing psychologist James Bailey's opinions  
11 that Plaintiff could follow multi-step tasks and work in a limited  
12 public contact setting. (Tr. 18-20, 329-30, 341, 361.) The ALJ  
13 thoroughly summarized and rationally interpreted the medical  
14 evidence and properly considered Plaintiff's significant lack of  
15 credibility in his step two analysis. 20 C.F.R. §§ 404.1520,  
16 416.920; 404.1520a, 416.920a, 404.1520a(d)(1), 416.920a(d)(1); *Webb*  
17 v. *Barnhart*, 433 F.3d 683, 685 (9<sup>th</sup> Cir. 2005) (credibility an  
18 appropriate factor to consider in evaluation of medical evidence  
19 when claimant's subjective complaints conflict with medical  
20 evidence). Finally, even assuming the diagnosed personality  
21 disorder were severe, Plaintiff was not prejudiced by this omission  
22 because the identified limitation caused by anti-social personality  
23 disorder was considered throughout the sequential evaluation and  
24 included in the hypothetical at step five. (Tr. 565-66.) Therefore,  
25 the claimed error would be harmless. *Lewis v. Astrue*, 498 F.3d 909,  
26 910 (9<sup>th</sup> Cir. 2007); *Stout v. Commissioner, Social Sec. Admin.*, 454  
27 F.3d 1050, 1056 (9<sup>th</sup> Cir. 2006)

28

## 1       C.    RFC Determination

2           It is well-settled that the ALJ is "responsible for determining  
 3           credibility, resolving conflicts in medical testimony and for  
 4           resolving ambiguities," in these proceedings. *Richardson*, 402 U.S.  
 5           at 400; *Andrews*, 53 F.3d at 1039; *SSR* 96-8p. The final  
 6           determination regarding a claimant's ability to perform basic work  
 7           is the sole responsibility of the Commissioner. 20 C.F.R. §§  
 8           404.1546, 416.946; *SSR* 96-5p (RFC assessment is an administrative  
 9           finding of fact reserved to the Commissioner). No special  
 10          significance is given to a medical source opinion on issues reserved  
 11          to the Commissioner. 20 C.F.R. §§ 404.1527(e), 416.927(e). As  
 12          discussed above, the ALJ considered the record in its entirety and  
 13          factored Plaintiff's significant lack of credibility and symptoms  
 14          attributable to substance abuse into his evaluation. The record  
 15          supports the exertional and non-exertional limitations assessed and  
 16          the hypothetical question to the VE is supported by the record in  
 17          its entirety. Where the ALJ's determination is a rational  
 18          interpretation of the evidence, and substantial evidence supports  
 19          the determination of disability, the court may not substitute its  
 20          judgment for that of the Commissioner. *Parra v. Astrue*, 481 F.3d  
 21          742, 746 (9<sup>th</sup> Cir. 2007); *Tackett*, 180 F.3d at 1097. Accordingly,

22       **IT IS ORDERED:**

23       1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is  
 24          **DENIED**;

25       2. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is  
 26          **GRANTED**;

27           The District Court Executive is directed to file this Order and  
 28          provide a copy to counsel for Plaintiff and Defendant. The file

1 shall be closed and judgment entered for Defendant.

2 DATED October 8, 2009.

3  
4 S/ CYNTHIA IMBROGNO  
5 UNITED STATES MAGISTRATE JUDGE  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28